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T.R.A. DOCKET ROOM

November 2, 2005

Ron Jones, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243

Re: *In Re: Petition to Open an Investigation to Determine Whether Atmos Energy Corp Should be Required by the TRA to Appear and Show Cause That Atmos Energy Corp. is Not Overearning in Violation of Tennessee Law and That it is Charging Rates That Are Just and Reasonable*

Docket Number: ~~05-00285~~ 05-00258

Dear Chairman Jones:

The Atmos Intervention Group, a group of customers who purchase natural gas from Atmos Energy Corporation, submits this letter in support of the Petition filed by the Consumer Advocate Division of the Office of the Attorney General. The Petition clearly demonstrates that Atmos appears to be earning substantially in excess of a just and reasonable return and that the Authority should — indeed, must — exercise its statutory duty to open an investigation of the company's rates.

The Tennessee legislature has instructed the Authority "to exercise a careful and watchful supervision" over utility rates and "to increase or reduce" those rates "as experience and business operations may show to be just." T.C.A. §65-5-106 (made applicable to utilities through T.C.A. §65-4-105(a)).

The Consumer Advocate presents two, equally compelling reasons why the Authority should act:

(1) The Company's reported earnings, as shown on the TRA's own records, are far higher than what the TRA has determined to be a reasonable profit for Chattanooga Gas Company, Nashville Gas, or the Tennessee American Water Company.

(2) The rates now charged by Atmos have not been examined or adjusted in ten years. In fact, Atmos, which merged with United Cities Gas Company after the current rates were established, has never had a rate case in Tennessee.

Given this prima facie evidence that Atmos appears to be earning millions of dollars a year in excess profits, "[i]t is the duty" of the agency to take action "as justice to the public . . . may require" (T.C.A. §65-5-106) and grant the Consumer Advocate's request

In response to the Petition, Atmos has made a hodgepodge of objections without disputing the Consumer Advocate's basic argument.

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First, Atmos questions whether the Authority should or could issue a "show cause" order (T.C.A. §65-2-106) to open a rate investigation, arguing that such an order would be "unprecedented." That is not accurate. As more experienced TRA staffers recall, the Public Service Commission routinely initiated rate investigations in the late 1980's as declining interest rates led to lower capital costs and, as a result of the agency's initiative, lower utility rates. Many such cases were initiated through the issuance of "show cause" orders pursuant to T.C.A. §65-2-106. The facts that Atmos' reported profits substantially exceed a reasonable return and that Atmos has never been subject to a rate investigation provide an ample basis for the Authority to issue such an order now. No further investigation is needed. The company would then be required to demonstrate — for the first time — that its current rates are appropriate.


Second, the company attacks the Consumer Advocate for suggesting that Atmos should only be earning a rate-of-return of 6.89%, as compared to the company's current, reported return of 11.2%. The company's arguments and name calling aside, no where does Atmos dispute that its current profits are significantly higher than the profit levels set by the Authority for other comparable utilities

Finally, Atmos implies that granting the Consumer Advocate's request will require a large and unnecessary commitment of time and resources by the Authority and its staff. That is also untrue. The factual basis for issuing a show cause order has already been established. Once the case begins, the company, the Consumer Advocate and other parties, such as the Atmos Intervention Group, will develop a complete, evidentiary record for the Authority to consider. The TRA staff, of course, may also issue data requests and ask questions of the witnesses as needed to supplement the record. There is no legal or practical reason why the staff (or any individual staffers) would need to participate as a party. The matter would then proceed like any other rate case.

In conclusion, it cannot seriously be argued that gas rates set in 1995 for United Cities are presumed "just and reasonable" for Atmos Energy in 2005. In view of the evidence that the company may be earning as much as \$10 million in excess profits, the Authority has a clear statutory duty to compel Atmos Energy to "appear and show cause" why its rates should not be reduced. After a decade, this rate case is long overdue.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/djc

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to:

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on this the 2nd day of November 2005.


Henry Walker